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No. 95-1853

In the Supreme Court of the United States

OCTOBER TERM, 1995

WILLIAM JEFFERSON CLINTON, PETITIONER

v.

PAULA CORBIN JONES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether a private civil action for damages against the President of the United States, based on alleged pre-Presidential conduct, should be permitted to go forward during the President's term of office.

TABLE OF CONTENTS

	Page
Interest of the United States	1
Statement	2
Argument	5
Conclusion	19

TABLE OF AUTHORITIES

Cases:

Anonymous v. *Anonymous*, 581 N.Y.S.2d 776 (N.Y. App. Dir. 1992)	2
Butz v. *Economou*, 438 U.S. 478 (1978)	15
Capital Traction Co. v. *Hof*, 174 U.S. 1 (1899)	16
Coburn v. *Coburn*, 412 So.2d 947 (Fla. Dist. Ct. App. 1982)	18
Coit Independence Joint Venture v. *FSLIC*, 489 U.S. 561 (1989)	18
England v. *Louisiana State Bd. of Medical Examiners*, 375 U.S. 411 (1964)	18
Harris County Comm'rs Court v. *Moore*, 420 U.S. 77 (1975)	18
Heck v. *Humphrey*, 114 S. Ct. 2364 (1994)	18
Hill v. *Harding*, 107 U.S. 631 (1882)	17
Koester v. *American Republic Invs.*, 11 F.3d 818 (8th Cir. 1993)	17
LaFontant v. *Aristide*, 844 F. Supp. 128 (E.D.N.Y. 1994)	2
Landis v. *North American Co.*, 299 U.S. 248 (1936)	5, 6
Moses H. Cone Hopsital v. *Mercury Const. Corp.*, 460 U.S. 1 (1983)	18
Nixon v. *Fitzgerald*, 457 U.S. 731 (1982)	2, 3-4, 6, 7, 9, 10, 11, 12, 15, 17
Oscar Mayer & Co. v. *Evans*, 441 U.S. 750 (1979)	17
Pierson v. *Ray*, 386 U.S. 547 (1967)	15

Cases—Continued: Page

Proceedings of the Grand Jury Impaneled December 5, 1972, In Re, Civil 73-965 (D. Md) 2, 17
Ricci v. *Chicago Mercantile Exchange*, 409 U.S. 289 (1973) 17
Semler v. *Oertwig*, 12 N.W.2d 265 (Iowa 1943) 18
United States v. *McDougal*, No. LR-CR-95-173 (E.D. Ark. Mar. 20, 1996) 2, 8
United States v. *Mellon Bank, N.A.*, 545 F.2d 869 (3d Cir. 1976) 17
United States v. *Nixon*, 418 U.S. 683 (1974) 9
United States v. *Poindexter*, 732 F. Supp. 142 (D.D.C. 1990) 2

Constitution, statutes and rules:

U.S. Const.:
Art. I:
§ 4 7
§ 5 7
Art. II 1, 7, 8
Amend. VI 9, 16
Amend. VII 16
Amend. XXV 7
Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. App. 501 *et seq.* 18
50 U.S.C. App. 521 18
11 U.S.C. 362 18
21 U.S.C. 881(i) 17
28 U.S.C. 517 3
42 U.S.C. 1983 ..... 2, 16
42 U.S.C. 1985 16
Fed. R. Civ. P.:
Rule 27 12
Rule 40 4

Miscellaneous:

Akhil R. Amar & Neal K. Katyal, *Executive Privileges and Immunities: The Nixon and Clinton Cases*, 108 Harv. L. Rev. 701 (1995) 7

Miscellaneous—Continued: Page

2 S. Beale & B. Bryson, *Grand Jury Law and Practice* (1986) 17
2 Max Farrand, *Records of the Federal Convention of 1787* (New Haven 1911) 17
Federalist No. 69 (Hamilton) (C. Rossiter ed. 1961) .. 17
Ronald D. Rotunda, *Presidents and Ex-Presidents As Witnesses: A Brief Historical Footnote*, 1975 U. Ill. L.F. 1 .....

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INTEREST OF THE UNITED STATES

This is a private civil action for damages against the President of the United States based on alleged pre-Presidential conduct. The decision below compels the President to participate in discovery and defend himself at trial. The United States has a fundamental interest in protecting the Office of the President and the powers and duties vested in that Office by Article II of the Constitution. The United States is therefore directly interested in whether, and under what

circumstances, a sitting President may be compelled to take part in judicial proceedings.[1]

STATEMENT

1. In May 1994, respondent Paula Corbin Jones filed a complaint in the United States District Court for the Eastern District of Arkansas. The complaint named as defendants petitioner William Jefferson Clinton, the President of the United States and former Governor of Arkansas, and Danny Ferguson, an Arkansas state trooper. Respondent alleged that then-Governor Clinton had sexually harassed her in May 1991, and that she was thereafter subjected to retaliation and libel relating to the episode. Respondent asserted claims under 42 U.S.C. 1983 and 1985, and under the common law of Arkansas. She

[1] The United States has participated in other cases that have presented related issues of Presidential participation in judicial proceedings. The United States participated as amicus curiae in *Nixon* v. *Fitzgerald*, 457 U.S. 731 (1982), which involved the President's immunity from civil actions for damages based on the President's conduct in office. Similarly, in *In Re Proceedings of the Grand Jury Impaneled December 5, 1972*, Civil 73-965 (D. Md.), which involved the amenability of a sitting Vice President to a criminal indictment and trial, the United States also addressed the amenability of a sitting President to prosecution. In addition, the United States participated as amicus curiae in *United States* v. *Poindexter*, 732 F. Supp. 142 (D.D.C. 1990), regarding the amenability of former President Reagan to a criminal subpoena relating to the Iran-Contra affair, and in *United States* v. *McDougal*, No. LR-CR-95-173 (E.D. Ark. Mar. 20, 1996), regarding the subpoena issued to President Clinton. The United States has participated as well in federal and state courts in cases involving the immunity of foreign heads of state. See, *e.g.*, *LaFontant* v. *Aristide*, 844 F. Supp. 128 (E.D.N.Y. 1994); *Anonymous* v. *Anonymous*, 581 N.Y.S.2d 776 (N.Y. App. Div. 1992).

sought $75,000 in compensatory damages and $100,000 in punitive damages for each claim.

In August 1994, the President filed a motion to dismiss the suit without prejudice or, in the alternative, to stay the suit. The President contended that he was immune during his term of office from private civil litigation arising out of pre-Presidential conduct. The President asserted that respondent should not be allowed to proceed with her suit while he remained in office, but should be permitted to reinstate her suit thereafter.[2]

The United States filed a statement of interest pursuant to 28 U.S.C. 517. The United States argued that, except in unusual circumstances, the President should not be compelled to defend himself during his term of office against private suits based on pre-Presidential conduct. The United States further submitted that this case presents no unusual circumstances that would warrant allowing the litigation to proceed during the President's term. The United States recommended that the court stay the proceedings, rather than dismiss the suit, in order to avoid any possible statute of limitations problems.

In December 1994, the district court entered an order denying the President's motion to dismiss but partially granting the President's alternative motion for a stay. Pet. App. 54-77. The district court sought guidance from *Nixon* v. *Fitzgerald*, 457 U.S. 731

[2] A separate immunity issue exists with respect to one of respondent Jones's claims, a libel claim that concerns alleged statements made on the President's behalf after he took office. See Pet. App. 9 n.7. Neither the district court nor the court of appeals has addressed whether the statements at issue come within the scope of the President's immunity under *Nixon* v. *Fitzgerald*, 457 U.S. 731 (1982).

(1982), in which this Court recognized absolute Presidential immunity for acts "within the 'outer perimeter' of [the President's] official responsibility." *Id.* at 756. Relying on the Court's reasoning in *Fitzgerald*, the district court concluded that the President is entitled to "temporary or limited immunity from trial" during his term of office for claims based on his unofficial acts. Pet. App. 70. The district court also based the stay on its equitable power over its docket and on Rule 40 of the Federal Rules of Civil Procedure. *Id.* at 71. The court held, however, that discovery could proceed "as to all persons including the President himself." *Ibid.*

2. The President and respondent filed cross-appeals from the district court's order. On January 9, 1996, a divided panel of the Eighth Circuit affirmed the denial of the President's motion to dismiss, reversed the grant of a partial stay, and remanded with instructions to allow the suit to proceed. Pet. App. 1-31.

The majority framed the issue as whether the President "is entitled to immunity from civil liability for his unofficial acts." Pet. App. 3. The court held that the President "is entitled to immunity, if at all, only because the Constitution ordains it." *Id.* at 16. The majority then determined that the Constitution does not grant the President immunity from private suits based on the President's unofficial acts. *Ibid.* It reasoned that the President's immunity under *Fitzgerald* for acts within the "outer perimeter" of his official duties represents the full extent of Presidential immunity under the Constitution. *Id.* at 8-9. The court acknowledged that the district court had also predicated its stay on its "broad discretion in matters concerning its own docket," but held that it

was an abuse of discretion for the district court to grant the stay in the absence of a constitutionally mandated immunity. *Id.* at 13 n.9. Judge Ross dissented, taking the position that private actions for damages against a sitting President based on the President's unofficial acts should be stayed until the completion of the President's term "unless exigent circumstances can be shown." *Id.* at 25.

ARGUMENT

The decision below prohibits trial courts from staying private civil suits against the President of the United States during the President's term of office. In the view of the United States, that decision is fundamentally mistaken. When a private litigant invokes judicial processes to pursue claims against a sitting President, the court ordinarily should exercise its power to postpone the litigation until the President leaves office. By compelling Presidents to defend themselves against personal liability during their term of office, the Eighth Circuit's holding creates serious risks for the institution of the Presidency. Given the practical importance of this issue to the responsibilities of the Presidency, and given the shortcomings in the Eighth Circuit's reasoning, review by this Court is warranted.

1. a. At issue here is when, not whether, the President may be required to defend himself against claims based on his unofficial acts. Resolution of that issue implicates the basic and well-established judicial power to stay civil proceedings. Over a half-century ago, in *Landis* v. *North American Co.*, 299 U.S. 248, 254 (1936), this Court held that "the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the

causes on its docket with economy of time and effort for itself, for counsel, and for litigants." The Court recognized in *Landis* that "[o]ccasions may arise when it would be 'a scandal to the administration of justice' * * * if power to coordinate the business of the court efficiently and sensibly [by staying proceedings] were lacking altogether." *Id.* at 255. In the view of the United States, the established authority of trial courts to stay proceedings should be exercised, except in extraordinary circumstances, to defer private suits against a sitting President during his term of office.

Whenever a litigant seeks to invoke the processes of the courts against the President, "the President's constitutional responsibilities and status [are] factors counseling judicial deference and restraint." *Fitzgerald*, 457 U.S. at 753. To be sure, the separation-of-powers doctrine "does not bar every exercise of jurisdiction over the President of the United States. But * * * a court, before exercising jurisdiction, must balance the constitutional weight of the interest to be served against the dangers of intrusion on the authority and functions of the Executive Branch." *Id.* at 753-754. When the President is forced to defend himself in his personal capacity during his term of office, "the dangers of intrusion on the authority and functions of the Executive Branch" are both real and obvious. The substantial burdens borne by individual defendants in civil litigation, especially litigation seeking to impose personal financial liability, require little elaboration. When those burdens are imposed on the President of the United States, they can be expected to impinge on the President's discharge of his constitutional duties, by forcing him to divert his energy and attention to the task of

protecting himself against personal liability. As a result, they implicate interests that are both public and constitutional in nature.

As this Court noted in *Fitzgerald*, "[t]he President occupies a unique position in the constitutional scheme," one that "distinguishes him from other executive officials." 457 U.S. at 749, 750. The President is the sole repository of the "executive Power" created by Article II of the Constitution. *Id.* at 749-750. Under Article II, the President is "entrusted with supervisory and policy responsibilities of utmost discretion and sensitivity," including "the enforcement of federal law * * *; the conduct of foreign affairs * * *; and the management of the Executive Branch." *Id.* at 750.

Both constitutionally and practically speaking, the demands of the President's office are unceasing. See Akhil R. Amar & Neal K. Katyal, *Executive Privileges and Immunities: The Nixon and Clinton Cases*, 108 Harv. L. Rev. 701, 713 (1995). The President must attend to his constitutional duties continuously throughout his tenure, in contrast to the Congress, which is required to assemble only "once in every Year," U.S. Const. Art. I, § 4, and which may adjourn on a regular basis, U.S. Const. Art. I, § 5. As a practical matter, the issues of domestic and foreign policy that call for the President's attention fully occupy, if they do not indeed outstrip, the time available for the President to respond. The adoption of the Twenty-Fifth Amendment, with its elaborate machinery for carrying out the President's functions when he "is unable to discharge the powers and duties of his office," testifies to the unique nature of the

Presidency and the incessant demands on its occupants.

Accordingly, a sitting President can defend himself against an action for damages, and assume all of the burdens that such an undertaking entails, only by diverting his time and attention from the demands of his office. That result would disserve the substantial public interest in the President's unhindered execution of his duties. It would also impair the integrity of the role assigned to the President by Article II of the Constitution.

On several occasions, sitting Presidents have given testimony as witnesses in federal criminal cases by means of depositions and interrogatories, while declining to attend, or being excused from attending, court to testify in person. See generally Ronald D. Rotunda, *Presidents and Ex-Presidents As Witnesses: A Brief Historical Footnote*, 1975 U. Ill. L. F. 1; *United States* v. *McDougal*, No. LR-CR-95-173 (E.D. Ark. Mar. 20, 1996) (order providing for President's videotaped deposition testimony in Whitewater prosecution). We know of no instance, however, in which a sitting President has been compelled to furnish evidence in connection with a civil proceeding. In any event, the burdens of participating in a civil suit as a defendant are far different, both in degree and in kind, from the burdens imposed on a witness, and the risk of wrongfully motivated efforts to entangle the President in those burdens is far greater. As a result, the historical examples of sitting Presidents' giving evidence as witnesses in criminal cases do not suggest that the President may

appropriately be forced to defend himself against personal liability during his term of office.[3]

b. This Court's decision in *Fitzgerald* casts light on the constitutional implications of subjecting the President to the burdens of civil litigation. As noted above, the Court held in *Fitzgerald* that the President is entitled to absolute immunity from claims for damages "for acts within the 'outer perimeter' of his official responsibility." 457 U.S. at 756. The Court characterized that immunity from liability as "a functionally mandated incident of the President's unique office, rooted in the constitutional tradition of the separation of powers and supported by our history." *Id.* at 749.[4]

In according the President absolute immunity, the Court placed primary reliance on the prospect that the President's discharge of his constitutional powers and duties would be impaired if he were

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[3] The production of evidence at a criminal trial has constitutional dimensions, since the Sixth Amendment guarantees a criminal defendant the right "to be confronted with the witnesses against him" and "to have compulsory process for obtaining witnesses in his favor." See *United States* v. *Nixon*, 418 U.S. 683, 711 (1974). A plaintiff in a civil action can assert no comparable constitutional entitlement. Cf. *Fitzgerald*, 457 U.S. at 754 n.37 ("there is a lesser public interest in actions for civil damages than, for example, in criminal prosecutions").

[4] The Court in *Fitzgerald* discussed in some detail historical precedents regarding the susceptibility of sitting Presidents to judicial process. See 457 U.S. at 751-752 n.31. The Court noted, *inter alia*, that such early Americans as John Adams, Oliver Ellsworth, Joseph Story, and Thomas Jefferson believed the President not to be subject to judicial process. *Id.* at 751 n.31. The Court concluded that "[t]he best historical evidence clearly supports" a rule of absolute immunity for a President's official actions. *Id.* at 752 n.31.

subject to suits for damages based on his official conduct. 457 U.S. at 751-754. To expose the President to suits for damages based on his official actions, the Court reasoned, could deprive him of "the maximum ability to deal fearlessly and impartially with the duties of his office." *Id.* at 752 (internal quotation marks omitted). The Court observed that, "[b]ecause of the singular importance of the President's duties, diversion of his energies by concern with private lawsuits would raise unique risks to the effective functioning of government." *Id.* at 751. In his concurring opinion, Chief Justice Burger also noted the possibility that private suits for damages against a President could be used for purposes of harassment and extortion. *Id.* at 762, 763 (Burger, C.J., concurring).

When the President is sued for actions wholly unrelated to his official responsibilities, *Fitzgerald*'s concern for ensuring "fearless[] and impartial[]" Presidential decisionmaking is not directly implicated. The more general concerns underlying this Court's holding, however, apply with equal force. *Fitzgerald* recognizes that "[t]he President occupies a unique position in the constitutional scheme," 457 U.S. at 749; that the President should not be diverted from attending to the national welfare by "concern with private lawsuits," *id.* at 751; and that the public interest in the President's unimpaired attention to his official responsibilities must take precedence over a private litigant's desire to obtain redress for legal wrongs, *id.* at 754 n.37. As explained above, the President would be faced with a "diversion of his energies by concern with private lawsuits," *id.* at 751, if he were compelled to defend himself against a private damage action during his term in office. That

diversion would "raise unique risks to the effective functioning of government." *Ibid.* *Fitzgerald* indicates that the judicial system should not lend itself to such risks.

c. When a sitting President is sued for conduct unrelated to his official actions, the demands of the Presidency do not require absolute immunity from liability. Rather, those demands may be accommodated by the more limited alternative of postponing the litigation until the President leaves office. Deferring litigation until the expiration of the President's term is sufficient to forestall the "intrusion on the authority and functions of the Executive Branch," *Fitzgerald*, 457 U.S. at 754, that would result if the President were required to divert his attention to the task of defending himself against personal liability. At the same time, deferring the suit preserves the plaintiff's right to seek relief for a meritorious claim. It affects only when, not whether, the President must answer the allegations; it merely delays, rather than defeats, the vindication of the plaintiff's private legal interests. It is thus far less burdensome for plaintiffs than the immunity recognized in *Fitzgerald*.[5]

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[5] Somewhat different concerns might be raised by private actions for equitable relief, such as suits to enjoin ongoing unlawful conduct unrelated to the President's official duties. But when a plaintiff seeks only damages for alleged past misconduct, delay is unlikely to vitiate the relief. And there is no reason to expect, at least as a general matter, that postponing litigation will defeat a plaintiff's eventual ability to marshal evidence in support of his or her claims. If the circumstances of a particular case suggest an unusual risk that specific evidence will be lost—for example, if the case will require the testimony of an extremely ill witness—arrange-

The rule we suggest is not an absolute one. In the exceptional case where a plaintiff will suffer irreparable injury without immediate relief, and where prompt adjudication will not significantly impair the President's ability to attend to the duties of his office, a stay need not issue. Absent such a showing, however, the public and constitutional interests in the President's undivided attention to his office demand a stay.[6]

d. The circumstances of this case do not support a departure from the general rule outlined above. To the contrary, this case well illustrates the potential burdens that private litigation would impose on the President's discharge of his official duties.

The President is the principal defendant in this case, and the suit seeks to subject him to hundreds of thousands of dollars in personal liability. Respondent's claims focus overwhelmingly on his alleged

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ments can be made to preserve that evidence without allowing a more general commencement or resumption of the litigation. Cf. Fed. R. Civ. P. 27 (perpetuation of testimony). Postponing adjudication of private damage actions will therefore rarely defeat a plaintiff's ability ultimately to obtain meaningful relief.

[6] Where the public and constitutional interest in the President's unimpaired attention to his duties conflicts with the purely private interest of a plaintiff in obtaining immediate relief, the private interest must yield. Cf. *Fitzgerald*, 457 U.S. at 754 n.37 (President has absolute immunity for claims relating to official actions even though "absolute immunity may impose a regrettable cost on individuals whose rights have been violated"). As a result, even where a plaintiff can show that his or her interests would be prejudiced, a stay should issue unless the court further determines that allowing the litigation to proceed would not impair the President's attention to the demands of his office.

actions, and her complaint acknowledges that the facts surrounding those claims are hotly contested. The President's testimony presumably would be central to the resolution of the underlying factual controversy. The case therefore threatens to place highly burdensome demands on his time and energy. If the President were required to defend himself against respondent's claims during his term of office, he would necessarily be forced to divert his attention from the demands of the Presidency.

In contrast, immediate resolution of respondent's claims is unnecessary to protect her interests. The complaint does not disclose any need for immediate relief. Respondent seeks damages for past actions, not relief against ongoing or future harms. Delaying an award of damages until after the President's term of office (if any award were determined to be due) would not appreciably affect the value of that relief. Moreover, as the district court pointed out, respondent waited three years from the time of the President's alleged actions before filing suit. There accordingly is no reason to believe that time is now of the essence. Nor is there any reason to believe that a stay will jeopardize respondent's ability to marshal evidence on her behalf.[7] In sum, the specific circumstances of this case reinforce the general rationale for postponing civil suits against sitting Presidents.

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[7] Respondent characterizes this case as "a very simple dispute," involving "only a handful of potentially important witnesses." Br. in Opp. 10. Given the nature of respondent's claims, the principal witnesses presumably are President Clinton and respondent herself. There is no reason to expect that either party will be unable to give testimony after the President leaves office.

2. The Eighth Circuit rejected this analysis, holding instead that the district court had committed reversible error in granting the President even a partial stay of proceedings during his term of office. The Eighth Circuit's reasoning is seriously flawed.

a. The court of appeals concluded that "the Constitution does not confer upon an incumbent President any immunity from civil actions that arise from his unofficial acts." Pet. App. 16. That conclusion rests on a reading of constitutional history and precedent that is, at best, highly debatable with respect to the conduct of litigation against the President during his term of office. In particular, the Eighth Circuit failed to give sufficient weight to the constitutional concerns identified by this Court in *Fitzgerald*. See pages 9-11, *supra*; see also Pet. App. 25-31 (Ross, J., dissenting).

In any event, even if the Eighth Circuit were correct that the Constitution *ex proprio vigore* does not render the President "immune" from civil actions during his term of office, that conclusion would not resolve the case. The question remains whether the constitutional and practical demands of the Presidency should lead a court to postpone such litigation until the President leaves office. The court of appeals acknowledged that a trial court has "broad discretion in matters concerning its own docket," but nonetheless held that the district court had committed reversible error by exercising that discretion in favor of a partial stay. Pet. App. 13 n.9. The court reasoned that a sitting President is entitled to immunity from civil suits, "if at all, only because the Constitution ordains it." *Id.* at 16. Because it believed that the President is not "constitutionally entitled" to "temporary immunity," the court of appeals concluded that

it was an abuse of discretion for the district court to grant a stay on equitable grounds. *Id.* at 13 n.9.

That line of reasoning is fundamentally misconceived. To begin with, official immunity is not confined, as the Eighth Circuit thought, to cases in which "the Constitution ordains it." See, *e.g.*, *Butz* v. *Economou*, 438 U.S. 478, 497 (1978) ("the doctrine of official immunity from § 1983 liability * * * [is] *not* constitutionally grounded") (emphasis added); *Pierson* v. *Ray*, 386 U.S. 547 (1967); *Fitzgerald*, 457 U.S. at 747 ("Our decisions concerning the immunity of government officials from civil damages liability have been guided by the Constitution, federal statutes, and history," and "[t]his Court necessarily also has weighed concerns of public policy, especially as illuminated by our history and the structure of our government."). *A fortiori*, no constitutional mandate is required for the more limited kind of "immunity" at issue in this case, which defers rather than denies the plaintiff's opportunity to pursue her claims in court. A court enjoys inherent authority to control the progress of cases on its docket, and it properly may exercise that authority to accommodate public and private interests that would be unfairly prejudiced by immediate litigation, regardless of whether it is constitutionally required to do so.

b. The court of appeals concluded that sitting Presidents can be shielded adequately from the burdens of civil litigation, without a stay, through "judicial case management." Pet. App. 13. That conclusion is, in our view, unduly optimistic. As a defendant, the President has a direct financial stake in the outcome of the litigation and an obligation to marshal his defenses. If the litigation is allowed to proceed during his term of office, the President will

inevitably be required to devote significant energy, expense, and attention to it, even if the court regulates the timing and extent of discovery and Presidential testimony. The Eighth Circuit's own conception of the future district court proceedings, in which the President must resort to repeated "motions for rescheduling, additional time, or continuances," *id.* at 16, belies the notion that "case management" can meaningfully protect the President from the need to attend to the litigation.

c. The Eighth Circuit's decision is also problematic in its analysis of the other interests involved. The majority and concurring opinions suggest that delaying litigation until a sitting President leaves office would infringe on a constitutional right of the plaintiff to have access to the courts. Pet. App. 10, 17, 20-21. The causes of action asserted here, however, are based on statutes (42 U.S.C. 1983 and 1985) or state common law, and therefore may be subjected to limitations and procedures designed to protect countervailing public interests. Moreover, a stay affects only the timing of the litigation, not whether the plaintiff receives her day in court. As a result, the plaintiff's asserted constitutional interest is preserved. In this regard, we note that while the Bill of Rights guarantees the right to a speedy trial in criminal cases (U.S. Const. Amend. VI), it lacks a similar guarantee for civil litigation.[8]

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[8] The concurring opinion is similarly mistaken in suggesting (Pet. App. 17) that a stay of the litigation would infringe on the plaintiff's Seventh Amendment right to trial by jury. The Seventh Amendment concerns who will decide contested issues of fact, not when such issues will be decided. See *Capital Traction Co.* v. *Hof*, 174 U.S. 1, 23 (1899) (Seventh Amendment

d. The court of appeals' decision is sharply at odds with the surrounding legal landscape. For example, the available evidence indicates that the Framers did not contemplate the possibility that criminal prosecutions could be brought against a sitting President.[9] The court of appeals' decision thus gives greater priority to private civil actions than criminal law enforcement proceedings would receive. Yet as this Court noted in *Fitzgerald*, "there is a lesser public interest in actions for civil damages than * * * in criminal prosecutions." 457 U.S. at 754 n.37.

In other contexts as well, it has been recognized that the public interest may require a stay of civil litigation. For example, a postponement or stay may be appropriate during the pendency of administrative proceedings (see, *e.g.*, *Oscar Mayer & Co.* v. *Evans*, 441 U.S. 750, 765 n.13 (1979); *Ricci* v. *Chicago Mercantile Exchange*, 409 U.S. 289, 306-307 (1973)), criminal proceedings (see, *e.g.*, 21 U.S.C. 881(i); *Koester* v. *American Republic Invs.*, 11 F.3d 818, 823 (8th Cir. 1993); *United States* v. *Mellon Bank, N.A.*, 545 F.2d 869 (3d Cir. 1976); 2 B. Beale & S. Bryson, *Grand Jury Law and Practice* § 8:07 (1986)),

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"does not prescribe at what stage of an action a trial by jury must * * * be had").

[9] See, *e.g.*, 2 Max Farrand, *Records of the Federal Convention of 1787* 64-69, 500 (New Haven 1911); The Federalist No. 69, at 416 (Hamilton) (C. Rossiter ed. 1961) (the President "would be liable to be impeached, tried, and, upon conviction * * * removed from office; and would afterwards be liable to prosecution and punishment in the ordinary course of law"). In *In Re Proceedings of the Grand Jury Impaneled December 5, 1972*, Civil 73-965 (D. Md.), the United States took the posi-tion that while a sitting Vice President is subject to criminal prosecution, a sitting President is not.

arbitration proceedings (*Moses H. Cone Hospital* v. *Mercury Constr. Corp.*, 460 U.S. 1, 20 n.23 (1983)), bankruptcy proceedings (11 U.S.C. 362; *Hill* v. *Harding*, 107 U.S. 631, 634 (1882); cf. *Coit Independence Joint Venture* v. *FSLIC*, 489 U.S. 561, 585 (1989) (FSLIC receivership)), or state court proceedings (*Heck* v. *Humphrey*, 114 S. Ct. 2364, 2373 n.8 (1994); *Harris County Comm'rs Court* v. *Moore*, 420 U.S. 77, 83 (1975); *England* v. *Louisiana State Bd. of Medical Examiners*, 375 U.S. 411 (1964)). Similarly, the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. App. 501 *et seq.*, provides for federal and state courts to grant stays in suits involving persons in military service in specified circumstances, 50 U.S.C. App. 521. See, *e.g.*, *Semler* v. *Oertwig*, 12 N.W.2d 265, 270 (Iowa 1943); *Coburn* v. *Coburn*, 412 So.2d 947, 949 (Fla. Dist. Ct. App. 1982).[10] The postponement of litigation under any of these doctrines or statutory schemes may be lengthy, sometimes as long or longer than a President's term in office. Congress and the courts have thought this result justified, however, because of the weight of the countervailing public policies supporting a stay.

The constitutional demands of the Office of President require the full measure of the President's attention and energy so long as he serves. We submit that the need to avoid substantial distractions from the President's constitutional duties is compelling, and is clearly of sufficient magnitude to require a

[10] Although we understand that the President does not claim relief under this statute, see Reply Br. 8 n.5, it demonstrates—like the other examples cited in text—that reasons of public policy may in certain circumstances require postponement of civil litigation.

stay of civil litigation against the President, absent unusual circumstances not present here. Due regard for the institution of the Presidency under our constitutional structure calls for the Court to resolve this issue now.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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